

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CRIMINAL #04-10288-RWZ

UNITED STATES

v.

JOSEPH ALLEN

DEFENDANT'S SENTENCING MEMORANDUM

INTRODUCTION

Unlike every other defendant in this dismal saga, Joseph Allen stands convicted of the misdemeanor offense of conspiring to possess Oxycontin, rather than the felony offense of conspiring to possess with intent to distribute and/or substantive distribution of Oxycontin. Accordingly, Allen comes before the Court as a drug user, not a drug dealer, and must be sentenced accordingly. Although the government will presumably seek to lump Allen in with everyone else, the jury, by its verdict, has concluded otherwise.

Since the Court sat through the two-week trial and is intimately familiar with the salient facts respecting offense conduct, there is no need to rehash them here. This memorandum will also not address Allen's prior record of assaultive behavior since the Court is well aware of his history, the government will undoubtedly belabor it in its sentencing argument, and all but one of those prior offenses occurred more than six years ago. Finally, there is no reason in the context of this case to summarize or parse the post-*Booker* jurisprudence of the 1st Circuit respecting sentencing. Rather,

this brief memorandum will focus on the Court's practical sentencing options and suggest some relevant considerations in choosing among them.

I. SENTENCING CONSTRAINTS

As the Probation Department correctly determined, the maximum term of imprisonment which the Court may impose in this case is one year. 21 U.S.C. § 844(a). If a term of imprisonment is imposed, the Court may impose a term of supervised release of up to one year as well. 18 U.S.C. § 3583(b). There is also a minimum fine of \$1,000, 21 U.S.C. § 844(a), subject to the defendant's ability to pay, and a mandatory special assessment of \$25 pursuant to 18 U.S.C. § 3013.

II. ALLEN'S RELEVANT PERSONAL CHARACTERISTICS

Joseph Allen is a drug addict. He is 28 years old and has been abusing drugs or alcohol since the age of 14. Beginning shortly before his arrest in this case in 2004, he began serious efforts to address this longstanding addiction through appropriate treatment. Allen's road towards recovery, like that of many addicts, has been a bumpy one. He left Spectrum House without authority in September 2005 after two months of inpatient treatment there. More recently, he admitted to using heroin while in residence at the Ryan House, a treatment program in Lynn. Despite these setbacks, Allen has been virtually drug-free for more than a year. According to his counselor at Ryan House, Liz Roldan, his "attitude has improved tremendously since he was first admitted" to the program on May 31, 2006. He attends a minimum of 6 AA/NA meetings per week and participates in clinical groups. He has also been "working on numerous writing assignments about his addiction and is really putting an effort into them." A copy of Ms. Roldan's letter is appended hereto for the Court's

information. Allen has made significant progress in the residential treatment program at the Ryan House and is committed to completing it if the Court permits him to do so.

A critical stabilizing factor in Allen's life has been his relationship with his longtime girlfriend, Alicia Parisi. Allen and Parisi have been romantically involved since 1998 and have lived together for approximately 6 years. They have two daughters under the age of 2. Although Allen's pretrial detention in this case and struggle with drug addiction have substantially interfered with his relationship with his young children, he is eager to cultivate that relationship so he can be an active father for his children each day. He is also anxious to start employment as soon as possible so he can contribute financially to supporting his family.

III. THE IMPACT OF THIS CASE ON ALLEN TO DATE

It has been 26 months since Joseph Allen was arrested in this case on June 29, 2004. Since that date, he has spent a total of 288 days in pretrial detention (6/29–8/9/04; 9/28/05–5/31/06). He has also spent a total of 153 days in residential drug treatment programs as directed by the Court (Spectrum House, 7/29–9/26/05; Ryan House, 5/31–8/31/06). He has spent the remainder of the time between arrest and sentencing (353 days) on house arrest with electronic monitoring. While Allen may be formally credited only with the time actually spent in detention on any sentence of imprisonment imposed by the Court, all of the other constraints on liberty he has endured for more than two years are part of the totality of circumstances to be considered by the Court in the imposition of sentence.

IV. DISCUSSION AND RECOMMENDATION

As a practical matter, the Court has the option of imprisoning Allen for up to 77 days or releasing him under some degree of supervision. Based upon all of the circumstances presented, including the offense of conviction, the amount of time Allen has already served in jail, and the importance of continuing his drug treatment, it would be not only pointless, but clearly counter-productive, to send Allen back to jail at this juncture. Rather, it is in the interests of justice and of the community that Allen be sentenced to time served, along with a period of supervised release during which he should receive continued drug treatment and be subjected to frequent drug testing, while working to help support his two young children. Since Allen is indigent, the payment of a fine should be waived.

Respectfully submitted,

JOSEPH ALLEN

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and a paper copy will be sent to U.S. Probation Officer Pamela Lombardini on August 28, 2006.

/s/ James L. Sultan
James L. Sultan